

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CR&R INCORPORATED

Employer,

And

PACKAGE AND GENERAL UTILITY
DRIVERS, TEAMSTERS LOCAL UNION
NO. 396

Petitioner.

Case Nos. 21-RC-262469;
21-RC-262474

**EMPLOYER'S BRIEF IN SUPPORT OF REQUEST FOR REVIEW
OF REGIONAL DIRECTOR'S DECISION
AND DIRECTION OF ELECTION**

Jeffrey A. Berman
jberman@seyfarth.com / 310-201-1541
SEYFARTH SHAW LLP
2029 Century Park East, Suite 3500
Los Angeles, CA 90067

Jennifer L. Mora
jmora@seyfarth.com / 415-732-1146
SEYFARTH SHAW LLP
560 Mission Street, Suite 3100
San Francisco, CA 94105

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Pursuant to Section 102.67(h) of the National Labor Relations Board's Rules and Regulations, CR&R Incorporated ("CR&R" or "Employer") submits the following brief pursuant to the Board's October 9, 2020 grant of the Employer's Request for Review of the Decision and Direction of Election ("Decision") issued by the Regional Director for Region 21 on August 12, 2020 in the above-captioned matter.

At issue is the Regional Director's decision to order a mail ballot election.¹ Longstanding Board law favors manual elections and, thus, the Regional Director was required to identify something beyond the mere existence of COVID-19 to support ordering the less-favored election method. Here, in addition to the Employer and the Union both *agreeing* to a manual election, the Regional Director was presented with facts demonstrating that, given the protections the Employer was willing to put in place, a manual election actually would have *decreased* the risk of anyone getting COVID-19:

- (1) all eligible voters are essential workers pursuant to applicable county and state public health and other agency mandates and, thus, are required to report to work every day (the same location where the election should occur), and have done so safely and without any issues since the start of the pandemic;
- (2) the Employer complies with all mandates and directives from the Centers for Disease Control and separate state and local mandates to prevent the spread of COVID-19 and ensure a safe environment for all employees and visitors;

¹ Over the Employer's objections, the Regional Director included disputed A Drivers (those working in the Employer's Transportation Division) in the petitioned-for unit. The Employer requested review of that unit determination, which the Board denied. The Employer respectfully disagrees with the Board's denial and notes that by submitting this brief, the Employer does not waive its right to further challenge that decision at a later date or in a later forum.

- (3) there is no record evidence that any employee had tested positive for COVID-19; and
- (4) the Employer indisputably could fulfill everything the General Counsel recommended in GC Memorandum 20-10 for a manual election and, in fact, would do more, including:
- providing large locations for the vote that included sufficient markings to ensure social distancing and the proper flow of traffic as voters entered and exited the polling area;
 - providing Plexiglas for use at the voting stations and the areas in which the Board Agent and observers would be placed;
 - providing all eligible voters, the Board Agent, observers and party representatives with individual face masks, face shields, gloves, hand sanitizers, disinfecting wipes, *and* pencils;
 - placing large hand sanitizer containers at both the exit and entry points for each location;
 - taking temperatures of anyone entering the polling area; and
 - ensuring that the voting areas are thoroughly cleaned and disinfected before the polling periods and throughout the day.

Thus, with the protections the Employer was prepared to put in place, it actually would have been *safer* to vote than it would have been on a normal workday, keeping in mind that there was no evidence that any employee had contracted COVID-19 at work.

The Regional Director ignored the clear experience of the Board that favors manual elections and failed to articulate a reason to deviate from this preference, especially when faced

with the plethora of evidence demonstrating the ability of the Employer to ensure a safe election and knowing the problems that accompany a mail ballot election.

In concluding that Riverside County is a community with “widespread COVID-19 transmission,” he focused solely on COVID-19 infection rates in Riverside County (43,376 positive cases and 824 deaths). At first blush, these rates might sound high, but the statement that the transmission is “widespread” falls flat when one also is told that the County has a population of approximately 2.47 million people covering approximately 7,200 square miles² – this results in less than 2% of the population having tested positive and a death rate of approximately .03%. This is not “widespread” transmission.

He also pointed to the fact that Riverside County had been subject to shut-down orders – at one time, however, the entire state of California was subject to some form of a shut-down order. Ultimately, he weighed his hypothetical assumptions that a manual election will result in an outbreak among employees deemed to be “essential workers” against all of the remaining factors that actually outweigh his unsupported fear: maximum voter participation, free choice, and supervision of the election to ensure its integrity and prevent coercion by or pressure from the Union when a voter completes their ballot at home.

In fact, in a situation where, as here, eligible voters are all essential workers and, thus, required to be at work each day, reference to county transmission rates is irrelevant – since eligible voters have to report to work on a daily basis even with COVID-19 in their community, it was business-as-usual for them. The idea that employees taking a short break from their normal workday to cast a ballot would somehow place them at an even greater risk of getting COVID-19

² <https://www.census.gov/quickfacts/riversidecountycalifornia>.

is nonsensical. This is especially true in view of the many extra protections the Employer was willing to put in place.

The threshold set by the Regional Director, that COVID-19 exists at all, means that no manual ballot can take place in Region 21, or at least in Riverside County, for the duration of any residual presence of the pandemic – and, indeed, sets a standard to suggest that mail ballots might be warranted in any situation where there is a hypothetical health or safety risk. If this is the standard that Regional Directors across the country are allowed to apply, then the General Counsel’s release of the 20-10 Memorandum was an exercise in futility. In truth, the Regional Director conformed the narrative to fit his desired result without any consideration for the many problems associated with mail ballots, including the procedural hoops associated with a mail ballot election, the potential for undue harassment and pressure from anyone with an interest in the election outcome, and the ability of unions to continue campaigning and making home and phone visits during the mail ballot polling period, a benefit employers do not have.

Importantly, the record gave the Regional Director *no basis* for concluding that a manual election would place employees, the Board Agent, or any other participant in any greater risk than might already exist on a normal day. In reality, with the measures the Employer identified above (e.g., Plexiglas barriers, personal face shields and masks, temperature checks, social distancing directives among many others), eligible voters and the Board Agent arguably would participate in an election in a *safer environment* than might be found otherwise. To allow the Regional Director’s decision to stand would be to send a message that any party in future elections can force a mail ballot election based on assumptions, unsupported fears and unrealistic hypotheticals. Accordingly, the Employer requests that the Board reinstitute and reaffirm longstanding precedent that reflects a preference for manual elections, especially when both parties desire a manual

election and also where an employer, like CR&R, demonstrated that employees in the petitioned-for unit continue to report to the facility on a daily basis and it will institute all reasonable safety protocols, including some that go beyond those set forth in General Counsel Memorandum 20-10.

In sum, the NLRB should vacate the Decision, direct the Regional Director to void the impounded ballots, and order a manual election.

II. THE REGIONAL DIRECTOR’S DECISION AND DIRECTION OF ELECTION

On July 1, 2020, Package & General Utility Drivers, Teamsters Local Union No. 396 (the “Union”) filed two separate Petitions with the National Labor Relations Board seeking to include and exclude the following from the petitioned-for unit:

Case No. 21-RC-262469:

Employees Included: All regular full-time and part-time Drivers, Sweepers, Helpers, Mechanics, Welders, Parts Clerks, Polisher Techs, Fuelers, Truck Washers, Bin Washers, Yard Persons, Operators, Traffic Controllers and MRF Employees employed by the Employer at its facility located at 1706 Goetz Road, Perris, CA 92570.

Employees Excluded: All other employees, all office employees, supervisors, salespersons, professional employees and guards, as excluded in the Act.

Case No. 21-RC-262474:

Employees Included: All regular full-time and part-time Drivers, Helpers, Mechanics, Welders, Parts Clerks, Fuelers, Truck Washers and Yard Persons employed by the Employer at its facility located at 40590 High Street, Cherry Valley, CA 92223.

Employees Excluded: All other employees, all office employees, supervisors, salespersons, professional employees and guards, as excluded in the Act.

(Bd. Ex. 1).³

³ Board Exhibits are designated as (Bd. Ex. __), Employer Exhibits are designated as (Er. Ex. __), transcript testimony is designated as (Tr. __), and the Regional Director’s Decision is designated as (D.D.E. __).

Following two days of hearing on unit determination and mail versus manual ballot election issues, on August 12, 2020, the Regional Director, among other things, ordered a mail ballot election. (D.D.E. at 11.)

III. STATEMENT OF FACTS

CR&R is a large, multi-facility, full-service waste and recycling collection company in Southern California, serving businesses throughout Orange, Los Angeles, San Bernardino, Imperial and Riverside counties. In this case, the Union filed a petition seeking to represent employees at the Employer's Perris and Cherry Valley, California facilities, both of which are full-service waste collection sites. (Tr. 42-26, 271.)

At the outset, it is important to note that both the Union and the Employer agreed to a manual election. (Tr. 282.) To support this joint request, the Employer's Leader of Environmental Health and Safety, Nikki Gilmore, provided unrefuted testimonial, photographic and video evidence at the hearing showing that a manual election can be conducted in a manner that would meet, and even exceed, the protocols set forth in General Counsel Memorandum GC 20-10. (Tr. 12-27; Er. Exs. 2 through 8.)

The Employer is considered an "essential business" under federal and state mandates and, thus, all of its employees currently are working on site at both the Perris and Cherry Valley facilities and have been doing so throughout 2020. (Tr. 15.) Because the health and safety of its employees is of paramount importance, the Employer initiated strict safety protocols to protect its employees from COVID-19. These protocols, at a minimum, conform with all protocols issued by the Centers for Disease Control, the Department of Health and Human Services and other governmental agencies. (Tr. 13-16.) Among other requirements, the Employer has in place policies and procedures regarding employee reports of a COVID-19 positive test, the presence of any

symptoms of the virus, or being in close contact with anyone who has tested positive. (Tr. 14, 17-19.)

In terms of preventing the spread of COVID-19 at any of its locations, the Employer requires that all Perris and Cherry Valley employees and visitors wear masks at all times and are directed to leave the premises if they fail to comply. (Tr. 14-15, 18; Er. Ex. 2.) If an employee handles paperwork, the Employer also provides and requires them to wear gloves. (Tr. 18.) The Employer regularly cleans and sanitizes both sites, has ample hand sanitizer and other disinfectants readily available at both locations, and has signs posted throughout advising of the mask, handwashing, and social distancing (a minimum of six feet) requirements. (TR. 14-16; Er. Ex. 2.) In addition, the Employer provides all drivers with personal hand sanitizer and other cleaning materials to keep in their vehicles. (Tr. 16.) The Employer also has safety cones and other markings on the ground spread throughout the facilities to direct the flow of traffic, ensure social distancing and prevent close gathering. (Tr. 17-18; Er. Ex. 2.)

With respect to GC 20-10, Gilmore testified without contradiction that the Employer could (and can) comply with all aspects of the Memorandum. (Tr. 13-14.) More importantly, however, the Employer committed to implementing and following even more protocols to minimize the risk of exposure to COVID-19 during a manual election (e.g., temperature checks and personal face shields, personal face masks, and individual sanitizers and wipes for voters, observers and the Board Agent, etc.). (Tr. 13-14, 229.)

As to the location of the vote, the Employer proposed the election be conducted in the “Veranda” at the Employer’s Perris facility and in the “Yard” at its Cherry Valley facility. (Tr. 23-30; Er. Exs. 4 - 8.) Both of these locations are partially outdoors, which allows for plenty of airflow and prevents employees and other election participants from violating social distancing

requirements. (Er. Exs. 4 - 8.) The Veranda area in Perris, the facility with the larger group of employees, is 28 by 29 feet. (Tr. 25-29; Er. Ex. 6.) In Cherry Valley, the garage is 28 by 25 feet (Er. Ex. 6), although the election also can be conducted outside with the proper placement of tents to block out the sun. (Tr. 26.)

At both locations, the Employer proposed to arrange three separate tables with Plexiglas barriers set up six feet apart to accommodate the Board Agent, Employer observer and Union observer with additional tables set off in a different area for the voting poll areas. (Tr. 20-21, 25-26; Er. Ex. 3 and 6.) The spaces are large enough that the observers can be six feet apart from each other, the Board Agent and the voter. (Tr. 25-29; Er. Ex. 4 - 8.) The Employer proposed separate entrance and exit points leading to and from the voting areas so that voters will not need to pass one another after voting. (Tr. 25-29; Er. Ex. 4 - 8.) Also, above and beyond the Employer's already extensive safety and sanitizing protocols, the Employer committed to sanitizing the voting areas immediately prior to the arrival of the Agent and the opening of the polling areas and, for Perris, again prior to the opening of the proposed second and third voting sessions. (Tr. 19-20.)

To protect all of the participants in the election from the spread of the COVID-19 virus, the Employer also agreed to provide approximately 300 face shields to the Board Agent, observers, party representatives, and all voters at both locations, in addition to making available sanitizer, masks (approximately 300), disinfecting wipes and gloves (approximately 300 pairs). (Tr. 20, 229.) Finally, the Employer agreed to provide sufficient glue sticks, scotch tape, and pencils without erasers for both locations to use during the election. (Tr. 20.)

Perris and Cherry Valley employees do not arrive at the facilities at the same time they start their shifts and, thus, there would not be a group of employees in the voting area at any one time over the total of the three different time blocks the parties had proposed as voting periods.

The Employer agreed to provide appropriate distance markers and arrows directing the flow of traffic, in addition to those already in place. (Tr. 28-29; Er. Ex. 6.) Further, the Employer expressed a willingness to take the temperatures of employees as they enter the voting area with a handheld temperature check device. (Tr. 18.)

Based on all the above-described safety precautions the parties jointly asked the Regional Director to order a manual election.

IV. APPLICABLE LEGAL STANDARD AND DISCUSSION

A. Appropriate Standard

The Board adheres to a presumption that in-person voting/manual ballots are preferable as they tend to effectuate employees' Section 7 rights. *See Willamette Industries*, 322 NLRB 856 (1997); *see also San Diego Gas & Electric*, 325 NLRB 1143, 1144 (1998); *Reynolds Wheels International*, 323 NLRB 1062, 1063 (1997) (“[U]nder existing Board precedent and policy, the applicable presumption favors a manual election, not a mail ballot.”). While the decision to conduct an election by mail or manual ballot may be within the discretion of the regional director (*see Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367 (1954) (place); *San Diego Gas & Electric*, 325 NLRB at 1144 (mail ballot)), elections are normally held on the employer's premises in the absence of good cause to the contrary.

The Board's longstanding rule is that elections generally should be conducted manually, unless the regional director reasonably concludes that circumstances make voting in a manual election difficult. *San Diego Gas & Electric*, 325 NLRB at 1144; NLRB Casehandling Manual, § 11301.2 (“The Board has ... recognized ... that there are instances where circumstances tend to make it difficult for eligible employees to vote in a manual election or where a manual election, though possible, is impractical or not easily done”). The Board has articulated three situations that “normally suggest the propriety of using mail ballots”: (1) where eligible voters are “scattered”

over a wide geographic area due to their job duties; (2) where they are “scattered” in that their work schedules vary significantly, so that they are not present at a common location at common times; and (3) where there is a strike, lockout or picketing in progress. NLRB Casehandling Manual, § 11301.2; *San Diego Gas & Electric*, 325 NLRB at 1145; *see also London’s Farm Dairy, Inc.*, 323 NLRB 1057 (1997); *Reynolds Wheels International*, 323 NLRB at 1062-63.

None of these situations was present here. The eligible employees are “essential employees” in a pandemic “critical business.” As such, they come to the facilities to work five days a week, every week. And, every single day, the employees work in an Employer-provided atmosphere that provides the high degree of safety required by the Centers for Disease Control and all other applicable health and safety agencies.

Board precedent in representation cases rests upon the critical threshold consideration of which method of election best advances employee choice (voter turnout, ease of participation, etc.). Mail or mixed ballot voting only exists when necessary to “enhance the opportunity of all to vote.” NLRB Casehandling Manual § 11301.2. *San Diego Gas & Electric* stands for the same: “[e]xtraordinary circumstances” mandating a mail ballot election may occur when the Regional Director “might reasonably conclude that [voters’] opportunity to participate in the election would be maximized by utilizing mail or mixed ballot election methods.” *Id.* at 1145. Specifically, a Regional Director must tie his or her exercise of discretion, even in cases of extraordinary circumstances, to the Board’s proper role in ensuring employee participation and free choice. *Id.* at 1145 n.10 (“A Regional Director should, and does, have discretion, utilizing the criteria we have outlined, to determine if a mail ballot election would be both more efficient and likely to enhance the opportunities for the maximum number of employees to vote.”).

B. The Regional Director Failed to Consider the Desires of the Parties

In rendering the Order, the Regional Director recognized, but summarily dismissed, the undisputed fact that both the Union and the Employer want to hold an in-person election. The controlling Board case law with respect to a regional director's discretion to order a mail-ballot election, *San Diego Gas & Electric*, confirms that "the Regional Director, in the exercise of discretion, should [] consider the desires of all the parties..." with respect to their choice of election method. 325 NLRB at 1145.

As further support the Union desires an in-person election, the Union declined to file any opposition to the Employer's Request for Review. *See* 29 CFR 102.67(f) (providing any party with 5 business days after the last day on which the request for review must be filed to file an opposition brief). The Union had the opportunity to oppose the Employer's Request for Review, and it did not take that opportunity. In view of this fact, and in the absence of contrary evidence, it logically follows that the Union's original request for an in-person election still holds. Both parties want to hold an in-person election, not a mail-ballot election.

C. The Regional Director Abused His Discretion in Ordering a Mail Ballot Election

The Regional Director did not take issue with the measures the Employer proposed to ensure a safe manual election. Instead, he denied the Employer and the Union's request simply because the pandemic exists – he engaged in no fact-specific analysis as to whether employees' opportunity to participate in the election "would be maximized by utilizing mail ... ballot election methods." In reality, all eligible voters, as essential workers, continue to work their normal shifts and, thus, it defies logic to believe that voter participation would have been higher with a mail ballot election.

Given the preference for manual elections, Board precedent *required* the Regional Director to analyze each and every factor the Board has previously held is relevant to the determination, including employee free choice, maximum voter participation, supervision of selection of representative, and voter safety at the location at issue. He failed to do so, relying instead on the sole fact that the country is in the middle of a pandemic.

Employee free choice and *maximum voter participation* are greater with a manual election. In this regard, when employees vote in a manual election, they get a ballot, check a “yes” or “no” box, and insert the ballot in the box. On the other hand, a mail ballot election requires more steps.

Specifically, the voter must assume the United States Postal Service will actually deliver a ballot to him or her, open the ballot, check a “yes” or “no” box, and follow what some might view as several complicated steps to ensure their ballot (a) reaches the Region and (b) is counted (e.g., placing the ballot in the appropriate envelope, then placing that envelope in another envelope (each envelope is a different color), then “signing” the outside of that envelope (a ballot is void if the voter prints their name), and then (once again) hoping the United States Postal Service delivers the envelope to the Region in time for the ballot count). And, if a voter does not receive a ballot, the burden is on the voter to call the Region to rectify the situation.

That a majority of eligible voters returned ballots in the instant matter does not moot the analysis as a mail ballot should not have been ordered in the first instance, or that it is entirely possible that some or all of the ballots (all of which have been impounded) may not actually be counted. This is so because if a voter did not follow the precise process described above, their ballot will be disregarded and void. In a manual election, voters are not required to (i) follow up with the Region if they did not receive a ballot, (ii) place their ballots into two separate envelopes,

(iii) sign their ballots, and (iv) to mail the ballot back to the Region. Any minor misstep by the voter will void their ballot. Yet, with a manual election, the risk that a voter might not have their ballot counted is far lower. And, what is more concerning is that it is entirely possible the mail ballot does not reflect the voter's actual choice – there simply is no way of knowing what efforts the Union or its supporters made to coerce employees into casting a different vote. Thus, the return rate of envelopes in this matter is irrelevant because the same inherent problems remain.

Another factor the Regional Director did not consider is that *supervision of the selection of representative* can only occur with a manual election given the presence of a Board Agent and observers to make sure there are no improprieties. There is no supervision whatsoever with a mail ballot election. As Union representatives are legally allowed to make home visits to eligible voters during a certification effort, (whereas employers are not), voters might have been coerced into casting a different vote and cannot be guaranteed that their vote will remain private. Moreover, union representatives can continue to campaign during the polling period whereas employers are restricted in their ability to do so.

In addition, with a mail ballot, the voters lacked access to assistance in following the steps necessary to have their ballot counted (e.g., proper placement in two separately colored envelopes and appropriate signatures), assuming the ballot was even received. On the other hand, with a manual election, voters can ask the Board Agent questions if they are confused and can cast their ballot in private without fear of any threats or coercion from the union or the employer.

Finally, the Regional Director did not adequately consider *voter safety* and did not explain the basis for his conclusion that an in-person vote carried so much risk that the only possible option was to deny the parties' request for the manner of election the Board prefers. The Regional Director recognized that the Employer had presented sufficient evidence to show that it could take all

measures outlined in the G.C. Memorandum, in addition to other measures not outlined in the Memorandum (e.g., providing Plexiglas barriers, face shields, masks, wipes, pencils, and hand sanitizers for all eligible voters, the Board Agent, and any other person involved in the election). (See Employer's Post-Hearing Brief at 26-29; Tr. 12-37; Er. Exs. 1 - 8.)

The Regional Director did not cite to any evidence of infection at either of the two facilities. The reason for this is that the record contains absolutely no such evidence. All the record indicates is that the Employer has closely followed the CDC guidelines in order to make sure that its essential employees are safe, but agreed to take significant steps to make sure that the employees and the Board Agents would not become infected including, but not limited to:

- providing large locations for the vote that included sufficient markings to ensure social distancing and the proper flow of traffic as voters entered and exited the polling area;
- providing Plexiglas barriers for use at the voting stations and the areas in which the Board Agent and observers would be placed;
- providing all eligible voters, the Board Agent, observers and party representatives with individual face masks, face shields, gloves, hand sanitizers, disinfecting wipes, *and* pencils;
- placing hand sanitizer at both the exit and entry points for each location;
- taking temperatures of anyone entering the polling area; and
- ensuring that the voting areas are thoroughly cleaned and disinfected before the polling periods and throughout the day.

Thus, participating in a manual election would *increase* the level of safety, not diminish it.

The Regional Director's reliance on what he viewed to be a high number of cases and deaths in Riverside County and that the County was subject to a shut-down order does not withstand scrutiny, especially when one considers the measures the Employer was prepared to take to ensure a safe vote among eligible voters who are essential workers. Indeed, he only cited the number of cases and deaths in the County without also noting that based on the current population of 2.7 million people, the number of cases was less than 2% and the number of deaths was approximately 0.03%. And, Riverside County was not unique in being subject to a shut-down order. Thus, none of this evidence provided the Regional Director any basis for rejecting the Parties' joint request for a manual election.

In reality, while the Regional Director correctly accepted that the Employer can fulfill all of the safety protocols set out in the GC Memorandum, and would implement additional measures to ensure voter and Board Agent safety, he ultimately placed a hypothetical safety risk (i.e., the assumption that voters will become infected no matter what the Employer does) above protecting employees against a confusing mail ballot process and home visits from union representatives and supporters pressuring a favorable vote. A manual election has more safeguards to ensure that eligible voters' ballots will actually be counted and prevent anyone, whether from the union or the employer, from interfering with their ability to make a free, fair and uncoerced decision about union representation. No evidence in the record tilts the balance away from a manual election – actually, given the safety measures currently in place and that can be followed, the scale actually tilts even more in the direction of a manual election.

The Regional Director has effectively developed an unattainable standard --that no manual vote can occur in Region 21, or at least in Riverside County, until the pandemic completely disappears. This threshold criterion (essentially one of, “absolutely no risk to anyone”), of course,

is inconsistent with Board law and the guidance of the General Counsel and is simply empirically impossible to reach. There is always “risk” of harm in day to day activity – risk of accidents, risk of transmission of another disease, etc. But there is no showing on the facts and circumstances of this case that there is a significant incremental risk of harm to anyone – indeed, with the extra health and safety precautions in place that reduce the transmission of any virus (not just COVID-19) and reduced traffic on the roads, there actually might be less risk of harm to a Board Agent and eligible voters in conducting this manual vote than in a typical pre-pandemic manual vote. This is especially true in light of the numerous measures identified above the Employer would implement to minimize the risk of transmission.

In sum, the Board favors manual elections over mail ballot elections, both the Employer and the Union requested a manual election, and the Employer could ensure the safety of all participants. Thus, the Board should overturn the Regional Director’s Decision and order a manual election. Again, here, eligible voters come to work every day and do so in a safe environment. These voters do not work from home. The state does not keep them at home on lockdown. Election or no election, they will interact just as much and in just the same fashion and the record is devoid of any evidence to explain why a mail ballot election outweighs the many benefits favoring a manual election.

V. CONCLUSION

The Regional Director failed to follow established Board precedent, national labor policy, and recent General Counsel guidance. Though the Regional Director has some discretion when determining the manner of elections, mere reference to hypothetical risks does not justify choosing an election method that is unsupervised, fraught with problems, and impairs employee free choice. Any decision to use a mail ballot must assess the facts and concerns specific to the election at hand

– which was not done here. For these reasons, the Employer respectfully requests that the Board vacate the Regional Director’s Decision and order a manual ballot election.

Respectfully submitted this 21st day of October, 2020.

CR&R INCORPORATED

By:

A handwritten signature in black ink, appearing to read 'Jeffrey A. Berman', with a long horizontal line extending to the right.

Jeffrey A. Berman
Jennifer L. Mora
SEYFARTH SHAW LLP

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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2020, I served a copy of the foregoing **EMPLOYER'S BRIEF IN SUPPORT OF REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION** upon the following, by sending a true and correct copy of the same via email and first class United States mail, with adequate postage prepaid, addressed as follows:

Ms. Amanda Lively
alively@wkcelegal.com
Wohlner Kaplon Cutler Halford & Rosenfeld
16501 Ventura Boulevard Suite 304
Encino, CA 91436

Mr. Jim Smith
jimsmith@local396.net
Package and General Utility Drivers,
Teamsters Local Union No. 396
880 Oak Park Road, Suite 200
Covina, CA 91724

Mr. William Cowan
william.cowan@nlrb.gov
National Labor Relations Board
Region 21
312 N Spring Street
Suite 10150
Los Angeles, CA 90012



Jennifer L. Mora
Counsel for Employer